

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JACOB SILVERMAN,

Plaintiff,

v.

DORSEY LANE, et al.,

Defendants.

Case No. 18-04510 BLF (PR)

**ORDER DENYING MOTION TO
REOPEN TIME TO FILE AN
APPEAL; INSTRUCTIONS TO
CLERK**

On June 30, 2020, the Court granted Defendants' motion for summary judgment, and entered judgment on the same day. Dkt. Nos. 90, 91. Plaintiff filed a notice of appeal on August 19, 2020, Dkt. No. 93, which was after the 30 days to file a notice of appeal had expired. *See* 28 U.S.C. § 2107(a). The Ninth Circuit construed Plaintiff's notice of appeal as including a motion to reopen the time to appeal pursuant to Federal Rule of Appellate Procedure 4(a)(6), and remanded the matter to this Court for the limited purpose of determining if the motion was timely filed, and to rule on the motion. Dkt. No. 96.

Rule 4(a)(6) provides that the district court may reopen the time to file an appeal only if the following conditions are satisfied: (A) the court finds that Plaintiff did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry; (B) the motion is filed within 180

1 days after the judgment or order is entered or within 14 days after the moving party
2 receives notice under Rule 77(d) of the entry, whichever is earlier; and (C) the court finds
3 that no party would be prejudiced. Fed. R. App. P. 4(a)(6).


4 The Court found that more information was necessary to determine the timeliness of
5 the motion and its merit, and scheduled briefing on the matter on December 1, 2020. Dkt.
6 No. 97. Plaintiff was given fourteen days from the filing date of the order to respond. *Id.*
7 at 2. On January 8, 2021, the copy of the order sent to Plaintiff was returned as
8 undeliverable. Dkt. No. 99. In an abundance of caution, the Court resent the order to
9 Plaintiff on April 6, 2021, at the last known address. Dkt. No. 100. That mail was not
10 returned as undeliverable, and to date, there has been no response or any further
11 communication from Plaintiff.

12 Plaintiff was advised in the court order that a “failure to file the supplemental
13 briefing will result in the Court denying the motion as untimely.” Dkt. No. 97 at 2.
14 Plaintiff has been given more than adequate time to file a response. He has not.
15 Accordingly, the Court has no choice but to deny the motion to reopen the time to file an
16 appeal as untimely. *See* Fed. R. App. P. 4(a)(6).

17 The Clerk shall send a copy of this order to the Ninth Circuit of Appeals.

18 **IT IS SO ORDERED.**

19 **Dated: __May 11, 2021__**


BETH LABSON FREEMAN
United States District Judge